

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JAMES EDWARD MURPHY

PETITIONER

VS.

CIVIL ACTION NO. 3:04CV17-WHB-JCS

LAWRENCE GREER AND JIM HOOD

RESPONDENTS

OPINION AND ORDER

This cause is before the Court on the Objection of Petitioner James Edward Murphy to Order of Magistrate Judge James C. Sumner (hereinafter "Objection"). Having considered the Objection, the Court finds that it is not well taken and should be denied.

This case arises out of Murphy's conviction and sentence by the Circuit Court of Pike County, Mississippi, for the crime of operating a vehicle while intoxicated, resulting in death. The trial occurred on January 13 and 14, 2000, and he was sentenced on January 18, 2000. Murphy was sentenced to twenty-five years of incarceration, with five years suspended. After pursuing state court remedies, on January 12, 2004, Murphy filed a Petition for Writ of Habeas Corpus (hereinafter "Petition") with this Court.

Regarding Murphy's Petition, Magistrate Judge James C. Sumner rendered a Report and Recommendation (hereinafter "R and R") on April 12, 2006. The R and R was filed with the Clerk of the Court on the same day under docket entry no. 23. In the R and R, Judge

Sumner found that Murphy's Petition should be denied, and that a Final Judgment should be entered dismissing this case with prejudice. Murphy timely filed the subject Objection on May 1, 2006. Through the Objection Murphy argues that the conclusions reached by Judge Sumner in the R and R were erroneous. The Objection is now ripe for consideration.

Under Federal Rule of Civil Procedure 72(a), a district judge has the authority to review a magistrate judge's order. Upon the filing of an objection to the magistrate judge's order, the district judge must review the order *de novo*. Koetting v. Thompson, 995 F.2d 37, 40 (5th Cir. 1993)(citation omitted); 28 U.S.C. § 636(b). If the contents of the order are found to be clearly erroneous or contrary to the law, the order may be modified or set aside. Fed. R. Civ. P. 72(a).

After reviewing all relevant data, the Court finds that the conclusions reached by Judge Sumner in the R and R were neither clearly erroneous nor contrary to the law. Therefore, the R and R should be adopted and Murphy's Objection should be denied. This findings requires the dismissal, with prejudice, of Murphy's Petition.

Based on the holdings presented above:

IT IS THEREFORE ORDERED that the Report and Recommendation of Magistrate Judge (docket entry no. 23) is hereby adopted.

IT IS FURTHER ORDERED that the Objection of Petitioner James Edward Murphy to Order of Magistrate Judge (docket entry no. 27) is hereby denied.

IT IS FURTHER ORDERED that Murphy's Petition for Writ of Habeas Corpus is hereby dismissed, with prejudice. A Final Judgment will be entered.

SO ORDERED this the 2nd day of June, 2006.

s/ William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE

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